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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-435

13  
14 **SARAH ELINOR PEMBERTON**  
15 **2500 E. Palm Canyon Drive, Apt. 103**  
16 **Palm Springs, CA 92264**  
**Registered Nurse License No. 626727**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

17 Respondent.

18  
19 **FINDINGS OF FACT**

20 1. On or about November 28, 2012, Complainant Louise R. Bailey, M.Ed., R.N., in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs, filed Accusation No. 2013-435 against Sarah Elinor Pemberton  
23 ("Respondent") before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

24 2. On or about September 23, 2003, the Board of Registered Nursing ("Board") issued  
25 Registered Nurse License No. 626727 to Respondent. The Registered Nurse License expired on  
26 August 31, 2007, and has not been renewed.

27 3. On or about November 28, 2012, Respondent was served by Certified and First Class  
28 Mail copies of the Accusation No. 2013-435, Statement to Respondent, Notice of Defense,

1 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
2 and 11507.7) at Respondent's address of record which, pursuant to California Code of  
3 Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board.  
4 Respondent's address of record was and is: 2500 E. Palm Canyon Drive, Apt. 103, Palm Springs,  
5 CA 92264.

6 4. Service of the Accusation was effective as a matter of law under the provisions of  
7 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
8 124.

9 5. On or about December 10, 2012, the aforementioned documents in Paragraph 3,  
10 which were served by First Class mail, were returned by the U.S. Postal Service marked  
11 "Unknown. Not at this address."

12 6. On or about December 31, 2012, the aforementioned documents in Paragraph 3,  
13 which were served by Certified mail, were returned by the U.S. Postal Service marked  
14 "Unclaimed."

15 7. The address on the documents was the same as the address on file with the Board.  
16 Respondent failed to maintain an updated address with the Board and the Board has made  
17 attempts to serve the Respondent at the address on file. Respondent has not made herself  
18 available for service and therefore, has not availed herself of her right to file a notice of defense  
19 and appear at hearing.

20 8. Government Code section 11506 states, in pertinent part:

21 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
22 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
23 of the accusation not expressly admitted. Failure to file a notice of defense shall  
constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
may nevertheless grant a hearing.

24 9. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
25 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2013-  
26 435.

27 10. California Government Code section 11520 states, in pertinent part:

28 (a) If the respondent either fails to file a notice of defense or to appear at the

1 hearing, the agency may take action based upon the respondent's express admissions  
2 or upon other evidence and affidavits may be used as evidence without any notice to  
3 respondent.

4 11. Pursuant to its authority under Government Code section 11520, the Board finds  
5 Respondent is in default. The Board will take action without further hearing and, based on the  
6 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
7 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
8 file at the Board's offices regarding the allegations contained in Accusation No. 2013-435, finds  
9 that the charges and allegations in Accusation No. 2013-435, are separately and severally, found  
10 to be true and correct by clear and convincing evidence.

11 12. Taking official notice of its own internal records, pursuant to Business and  
12 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
13 and Enforcement is \$867.50 as of January 11, 2013.

#### 14 DETERMINATION OF ISSUES

15 1. Based on the foregoing findings of fact, Respondent Sarah Elinor Pemberton has  
16 subjected her Registered Nurse License No. 626727 to discipline.

17 2. The agency has jurisdiction to adjudicate this case by default.

18 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered  
19 Nurse License based upon the following violations alleged in the Accusation which are supported  
20 by the evidence contained in the Default Decision Evidence Packet in this case:

21 (a) Business and Professions Code section 2761, subdivision (a)(4) on the grounds of  
22 unprofessional conduct because Respondent's registered nurse license was subject to discipline  
23 by the New Mexico Board of Nursing in a case entitled *In the Matter of Sarah Pemberton License*  
24 *No: R41421*. In that case, the New Mexico Board issued a Decision and Order which placed  
25 Respondent's license on probation for two years with terms and conditions. The facts and  
26 circumstances underlying the order were that from December 6, 2005 through July 30, 2006,  
27 Respondent was employed as a travel nursing by Aureus Nursing. From July 6, 2006 to August  
28 10, 2006, Respondent was assigned to Banner Thunderbird Medical Center in Arizona. While

1 working at Banner Thunderbird Medical Center, Respondent failed to properly document removal  
2 of Morphine, Percocet, and Temazepam from the Pyxis machine.

3 (b) Business and Professions Code section 2762, subdivision (e) on the grounds of  
4 unprofessional conduct because Respondent made grossly incorrect, grossly inconsistent, or  
5 unintelligible in a hospital, patient, or other record pertaining to controlled substances. While  
6 working at Banner Thunderbird Medical Center, Respondent failed to properly document removal  
7 of Morphine, Percocet, and Temazepam from the Pyxis machine.

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**ORDER**

IT IS SO ORDERED that Registered Nurse License No. 626727, heretofore issued to Respondent Sarah Elinor Pemberton, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MAY 23, 2013.

It is so ORDERED APRIL 23, 2013.

  
FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS

51223244.DOC  
DOJ Matter ID:LA2012508126

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
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2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
3 SYDNEY M. MEHRINGER  
Deputy Attorney General  
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Telephone: (213) 897-2537  
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E-mail: Sydney.Mehringer@doj.ca.gov  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-435**

13 **SARAH ELINOR PEMBERTON**  
2500 E. Palm Canyon Drive, Apt. 103  
14 **Palm Springs, CA 92264**

**A C C U S A T I O N**

15 **Registered Nurse License No. 626727**

Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about September 23, 2003, the Board of Registered Nursing issued Registered  
23 Nurse License Number 626727 to Sarah Elinor Pemberton ("Respondent"). The Registered  
24 Nurse license was in full force and effect at all times relevant to the charges brought herein and  
25 expired on August 31, 2007, and has not been renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

7. Title 16, section 1419.3 of the California Code of Regulations defines the period in which a license may be renewed or reinstated:

"In the event a licensee does not renew his/her license as provided in Section 2811 of the code, the license expires. A licensee renewing pursuant to this section shall furnish a full set of fingerprints as required by and set out in section 1419(b) as a condition of renewal.

(a) A licensee may renew a license that has not been expired for more than eight years by paying the renewal and penalty fees as specified in Section 1417 and providing evidence of 30 hours of continuing education taken within the prior two-year period.

(b) A licensee may renew a license that has been expired for more than eight years by paying the renewal and penalty fees specified in Section 1417 and providing evidence that he or she holds a current valid active and clear registered nurse license in another state, a United States territory, or Canada, or by passing the Board's current examination for licensure."

## STATUTES

8. Section 2761 of the Code states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:



"(a) Unprofessional conduct, which includes, but is not limited to, the following:

• • • •

"(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action."

9. Section 2762 of the Code states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist; or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

• • • •

"(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

## CONTROLLED SUBSTANCES

10. Morphine is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(L) and is a dangerous drug pursuant to Business and Professions Code section 4022.

11. Percocet, oxycodone and acetaminophen, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(M) and is categorized as a dangerous drug according to section 4022.

1 12. Temazepam is a Schedule IV controlled substance pursuant to Health and Safety  
2 Code section 11057(d)(29) and is a dangerous drug pursuant to Business and Professions Code  
3 section 4022.

4 **COST RECOVERY**

5 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
6 administrative law judge to direct a licentiate found to have committed a violation or violations of  
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
10 included in a stipulated settlement.

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Unprofessional Conduct – Disciplinary Action by the New Mexico Board of Nursing)

13 14. Respondent is subject to disciplinary action under Code section 2761, subdivision  
14 (a)(4) on the grounds of unprofessional conduct because her registered nurse license was subject  
15 to discipline by the New Mexico Board of Nursing (“New Mexico Board”), as follows:

16 15. On or about August 17, 2007, in a case entitled *In the Matter of Sarah Pemberton*  
17 *License No: R41421*, the New Mexico Board issued a Decision and Order which placed  
18 Respondent’s license on probation for two years with terms and conditions. The facts and  
19 circumstances underlying the order were:

20 (a) From December 6, 2005 through July 30, 2006, Respondent was employed as a  
21 travel nursing by Aureus Nursing. From July 6, 2006 to August 10, 2006, Respondent was  
22 assigned to Banner Thunderbird Medical Center in Arizona. While working at Banner  
23 Thunderbird Medical Center, Respondent failed to properly document removal of Morphine,  
24 Percocet, and Temazepam from the Pyxis machine.

25 **SECOND CAUSE FOR DISCIPLINE**

26 (Unprofessional Conduct – Drug Related Transgressions)

27 16. Respondent is subject to disciplinary action under Code section 2762, subdivision (e)  
28 on the grounds of unprofessional conduct because she made grossly incorrect, grossly

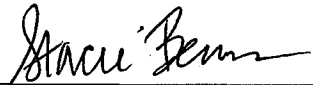
1 inconsistent, or unintelligible in a hospital, patient, or other record pertaining to controlled  
2 substances. Complainant incorporates by reference the allegations in Paragraph 15(a), as though  
3 fully set forth herein.

4 **PRAYER**

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
6 and that following the hearing, the Board of Registered Nursing issue a decision:

- 7 1. Revoking or suspending Registered Nurse License Number 626727, issued to Sarah  
8 Elinor Pemberton;
- 9 2. Ordering Sarah Elinor Pemberton to pay the Board of Registered Nursing the  
10 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
11 Professions Code section 125.3; and
- 12 3. Taking such other and further action as deemed necessary and proper.
- 13

14 DATED: NOVEMBER 28, 2012

15 *for*   
16 LOUISE R. BAILEY, M.ED., RN  
17 Executive Officer  
18 Board of Registered Nursing  
19 Department of Consumer Affairs  
20 State of California  
21 Complainant

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